

Regular Session, 2009

HOUSE BILL NO. 782

BY REPRESENTATIVE ELLINGTON

DISTRICTS/COMMUNICATIONS: Provides additional service charge on wireless telecommunications services

1 AN ACT

2 To enact R.S. 33:9109.1, relative to communications districts; to provide for intent; to
3 provide for definitions; to provide for collection and remittance of prepaid wireless
4 telecommunications service charge; to provide for the administration of the prepaid
5 wireless service charge; to provide for distribution of funds to communications
6 districts; to provide for issues of liability; to provide for exclusivity of the service
7 charge; to provide an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 33:9109.1 is hereby enacted to read as follows:

10 §9109.1 Prepaid wireless telecommunications 911 service charge; intent;
11 definitions; collection and remittance; administration; distribution of funds;
12 liability; exclusivity

13 A. Intent. (1) The legislature finds that maintaining effective and efficient
14 911 systems across the state benefits all citizens.

15 (2) Service charges imposed upon the consumers of telecommunication
16 services that have the ability to dial 911 are an important funding mechanism to
17 assist state and local governments with the deployment of enhanced 911 services to
18 the citizens of this state.

1 (3) Prepaid wireless telecommunication services are an important segment
2 of the telecommunications industry and have proven particularly attractive to low-
3 volume consumers.

4 (4) Unlike traditional telecommunication services, prepaid wireless
5 telecommunications services are not sold or used pursuant to term contracts or
6 subscriptions, and monthly bills are not sent to consumers by prepaid wireless
7 telecommunication service providers or retail vendors.

8 (5) Prepaid wireless consumers have the same access to emergency 911
9 services from their wireless devices as wireless consumers on term contracts, and
10 prepaid wireless consumers benefit from the ability to access the 911 system by
11 dialing 911. Therefore, prepaid wireless consumers should begin contributing to
12 funding of the 911 emergency communications system.

13 (6) Consumers purchase prepaid wireless telecommunication services at a
14 wide variety of general retail locations and other distribution channels, not just
15 through service providers. Such purchases are made on a "cash-and-carry" or "pay-
16 as-you-go" basis from retailers.

17 (7) To ensure equitable contributions to the funding of 911 systems from
18 consumers of prepaid wireless telecommunication services, the collection and
19 payment obligation of charges to support E911 should be imposed upon the
20 consumer's retail purchase of the prepaid wireless telecommunication service and
21 should be in the form of a single, statewide charge that is collected once at the time
22 of purchase directly from the consumer, remitted to the state, and distributed to
23 communications districts.

24 B. Definitions. As used in this Section, the following words and terms shall
25 have the following meanings, unless the context clearly indicates otherwise:

26 (1) "Consumer" means a person who purchases prepaid wireless
27 telecommunications service in a retail transaction.

28 (2) "Department" means the Department of Revenue.

1 (3) "Prepaid wireless 911 service charge" means the charge that is required
2 to be collected by a seller from a consumer in the amount established under
3 Subsection C of this Section.

4 (4) "Prepaid wireless telecommunications service" means a wireless
5 telecommunications service that allows a caller to dial 911 to access the 911 system,
6 which service shall be paid for in advance and is sold in predetermined units or
7 dollars of which the number declines with use in a known amount.

8 (5) "Provider" means a person that provides prepaid wireless
9 telecommunications service pursuant to a license issued by the Federal
10 Communications Commission.

11 (6) "Retail transaction" means the purchase of prepaid wireless
12 telecommunications service from a seller for any purpose other than resale.

13 (7) "Seller" means a person who sells prepaid wireless telecommunications
14 service to another person.

15 (8) "Wireless telecommunications service" means commercial mobile radio
16 service as defined by 47 C.F.R. 20.3, as amended.

17 C. Collection and remittance of prepaid wireless telecommunications 911
18 service charge. (1) There is hereby imposed a prepaid wireless telecommunications
19 911 service charge of fifty cents per retail transaction.

20 (2) The prepaid wireless 911 service charge shall be collected by the seller
21 from the consumer with respect to each retail transaction occurring in this state. The
22 amount of the prepaid wireless 911 service charge shall be either separately stated
23 on an invoice, receipt, or other similar document that is provided to the consumer by
24 the seller, or otherwise disclosed to the consumer.

25 (3) For purposes of Paragraph (2) of this Subsection, a retail transaction that
26 is effected in person by a consumer at a business location of the seller shall be
27 treated as occurring in this state if that business location is in this state, and any other
28 retail transaction shall be treated as occurring in this state if the retail transaction is
29 treated as occurring in this state for purposes of R. S. 47:301(16)(d).

1 (4) The prepaid wireless 911 service charge shall be the liability of the
2 consumer and not of the seller or of any provider, except that the seller shall be liable
3 to remit all prepaid wireless 911 service charges that the seller collects from
4 consumers as provided in Subsection D of this Section, including all such charges
5 that the seller is deemed to collect where the amount of the charge has not been
6 separately stated on an invoice, receipt, or other similar document provided to the
7 consumer by the seller.

8 (5) The amount of the prepaid wireless 911 service charge that is collected
9 by a seller from a consumer, whether or not such amount is separately stated on an
10 invoice, receipt, or other similar document provided to the consumer by the seller,
11 shall not be included in the base for measuring any tax, fee, surcharge, or other
12 charge that is imposed by this state, any political subdivision of this state, or any
13 intergovernmental agency.

14 D. Administration of prepaid wireless 911 service charge. (1) Prepaid
15 wireless 911 service charges collected by sellers shall be remitted to the department
16 at the times and in accordance with Chapter 2 of Title 47 of the Louisiana Revised
17 Statutes of 1950, with respect to the state sales tax. The department shall establish
18 registration and payment procedures that substantially coincide with the registration
19 and payment procedures that apply under Chapter 2 of Title 47 of the Louisiana
20 Revised Statutes of 1950, with respect to the state sales tax.

21 (2) A seller shall be permitted to deduct and retain three percent of prepaid
22 wireless 911 service charges that are collected by the seller from consumers.

23 (3) The audit and appeal procedures applicable under Chapter 2 of Title 47
24 of the Louisiana Revised Statutes of 1950 with respect to the state sales tax shall
25 apply to prepaid wireless 911 service charges.

26 (4) The department shall establish procedures by which a seller of prepaid
27 wireless telecommunications service may document that a sale is not a retail
28 transaction, which procedures shall substantially coincide with the procedures for

1 documenting sale for resale transactions under Chapter 2 of Title 47 of the Louisiana
2 Revised Statutes of 1950 with respect to the state sales tax.

3 (5) The department shall pay all remitted prepaid wireless 911 service
4 charges over to eligible communications districts in accordance with Subsection E
5 of this Section. The department may retain up to two percent of remitted service
6 charges to reimburse its direct costs of administering the collection and remittance
7 of prepaid wireless 911 service charges.

8 E. Distribution of Funds to Communications Districts. (1) Each
9 communications district shall receive a distribution within thirty days of the end of
10 each calendar quarter of a portion of the revenues remitted to the department under
11 Subsection D of this Section.

12 (2) The amount of the distribution shall be determined by dividing the
13 population of the communications district by the state population, and then
14 multiplying that quotient times the total revenues remitted to the department after
15 deducting the amount authorized in Paragraph (D)(5) of this Section.

16 F. Liability. (1) No provider or seller of prepaid wireless telecommunications
17 service shall be liable for damages to any person resulting from or incurred in
18 connection with the provision of, or failure to provide, 911 or E911 service, or for
19 identifying, or failing to identify, the telephone number, address, location, or name
20 associated with any person or device that is accessing or attempting to access 911 or
21 E911 service.

22 (2) No provider or seller of prepaid wireless telecommunications service
23 shall be liable for damages to any person resulting from or incurred in connection
24 with the provision of any lawful assistance to any investigation or activity by a law
25 enforcement officer of the United States, this or any other state, or any political
26 subdivision of this or any other state, in connection with any lawful investigation or
27 other law enforcement activity by such law enforcement officer.

28 G. Exclusivity of charge. The prepaid wireless E911 charge shall be the only
29 E911 funding obligation imposed with respect to prepaid wireless

1 telecommunications service in this state, and no tax, fee, surcharge, or other charge
2 shall be imposed by this state, any political subdivision of this state, or any
3 intergovernmental agency, for E911 funding purposes, upon any provider, seller, or
4 consumer with respect to the sale, purchase, use, or provision of prepaid wireless
5 telecommunications service.

6 Section 2. This Act shall take effect on January 1, 2010.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ellington

HB No. 782

Abstract: Provides for a 911 service charge on prepaid wireless services.

Present law provides that communications districts shall collect 911 emergency service charges from landline and wireless telecommunications services.

Proposed law provides for definitions.

Proposed law provides for a prepaid wireless telecommunications 911 service charge of \$0.50 per retail transaction.

Proposed law provides that the prepaid wireless 911 service charge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 911 service charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

Proposed law provides that a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of present law.

Proposed law provides that the prepaid wireless 911 service charge shall be the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless 911 service charges that the seller collects from consumers, including all such charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

Proposed law provides that the amount of the prepaid wireless 911 service charge that is collected by a seller from a consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

Proposed law provides that the prepaid wireless 911 service charges collected by sellers shall be remitted to the department of revenue. The department shall establish registration and payment procedures.

Proposed law provides that a seller shall be permitted to deduct and retain 3% of prepaid wireless 911 service charges that are collected by the seller from consumers.

Proposed law provides that the audit and appeal procedures applicable under present law with respect to the state sales tax shall apply to prepaid wireless 911 service charges.

Proposed law provides that the department shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is not a retail transaction.

Proposed law provides that the department shall pay all remitted prepaid wireless 911 service charges over to eligible communications districts. The department may retain up to 2% of remitted service charges to reimburse its direct costs of administering the collection and remittance of prepaid wireless 911 service charges.

Proposed law provides that each communications district shall receive a distribution within 30 days of the end of each calendar quarter of a portion of the revenues remitted to the department.

Proposed law provides that the amount of the distribution shall be determined by dividing the population of the communications district by the state population, and then multiplying that quotient times the total revenues remitted to the department after deducting the amount authorized in proposed law.

Proposed law provides that no provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 or E911 service.

Proposed law provides that no provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigator or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

Proposed law provides that the prepaid wireless E911 charge shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for E911 funding purposes, upon any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service

Effective Jan. 1, 2010.

(Adds R.S. 33:9109.1)